

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 850 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 NO

M/S ALSA CONSTRUCTION AND HOUSING LTD.

Versus

M/S PINNACLE FINANCE LTD.

Appearance:

MR VIVEK BAROT for Petitioner

MR BP GUPTA for Respondent No. 1

MR PB BHATT APP for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 10/08/98

ORAL JUDGEMENT

The petitioner company has approached this court with a prayer that Criminal Case No.2193 of 1997 filed in the Court of the learned Metropolitan Magistrate, Court No.9, Ahmedabad be quashed. In the said complaint filed by Respondent No.1, it has been alleged that the petitioner company had given a cheque for Rs.50 lakhs

bearing No.787029 dated 27th March, 1997 to Respondent No.1 and the said cheque was dishonoured. In spite of notice given to the petitioner, the said amount was not paid and, therefore, a complaint was filed as the petitioner had committed the offence punishable under Section 138 of the Negotiable Instruments Act.

2. It has been mainly submitted in the present application that, after the cheque for Rs.50 lakhs was dishonoured, the petitioner had given another cheque for Rs.22 lakhs and it wanted the entire payment to be made as per a different schedule. As the petitioner had paid a cheque for Rs.22 lakhs to Respondent No.2, as per the submission of the petitioner company, the complaint filed under Section 138 of the Negotiable Instruments Act was not maintainable.

3. Learned Advocate Mr.Gupta appearing for Respondent No.1 has submitted that the cheque for Rs.50 lakhs given to Respondent No.1 had been dishonoured and, in spite of service of notice, the petitioner had not paid the amount payable by it to Respondent No.1 company and, therefore, an offence has already been committed by the petitioner company. He has further submitted that another cheque given by the petitioner for Rs.22 lakhs had also been dishonoured. In the circumstances, it has been submitted by him that the averments pertaining to reschedule of payment and another cheque are absolutely irrelevant.

4. I have heard learned Advocate Mr.Gupta for Respondent No.1 and learned A.P.P. Mr.Bhatt for Respondent No.2. It is not in dispute that the cheques given by the petitioner has been dishonoured. In spite of service of notice, the petitioner did not make payment within the stipulated time-limit. In the circumstances, prima facie, it appears that the complaint under Section 138 of the Negotiable Instruments Act is maintainable. If the petitioner has any defence, it would be open to the petitioner to raise such defence and make appropriate submissions before the trial court in the course of trial. I do not see any substance in this application and, therefore, this application is dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated.

SD/-

[KMG Thilake]

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